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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-------------------------|---------------------|------------------|
| 10/626,357 | 07/24/2003 | Mohammed Ali Hajianpour | 1360 | 9141 |

28173 7590 03/13/2006

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EXAMINER

PHILOGENE, PEDRO

ART UNIT PAPER NUMBER

3733

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|--------------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/626,357 | HAJIANPOUR, MOHAMMED ALI | |
| | Examiner | Art Unit | |
| | Pedro Philogene | 3733 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7,8 and 10-12 is/are rejected.
- 7) ☒ Claim(s) 2,6,9 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/24/03</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,3-5,7,8,10,11,12 are rejected under 35 U.S.C. 102(e) as being anticipated by Yao (6,514,253).

With respect to claim 1, Yao discloses an external fixation device a frame (10) including an elongated distal portion, having an inner surface facing upward, and a proximal portion extending rearward and upward from the distal portion, having an inner surface facing upward and forward; as best seen in FIG. 5, a plurality of shaft attachment pins (36,37) for attachment within a shaft portion of the fractured bone; a plurality of shaft attachment pin clamps (40,43) extending along the elongated distal portion, wherein the shaft attachment pin clamps hold the shaft attachment pins to extend upward from the elongated distal portion; a plurality of fragments pins (36,37) (second set) for attachment within fragments of the fractured bone; a plurality of fragment attachment pin clamps (70,77) extending along the proximal portion, wherein the fragment attachment pin clamps hold the fragment attachment pins to extend upward from the proximal portion; a medullar pin, as best seen in FIG.5, for attachment within a medullar channel of the fractured bone ; and a medullar pin clamp(30,32,34)

Art Unit: 3733

disposed within an upper end of the proximal portion, wherein the medullar pin clamp holds the medullar pin to extend above the elongated distal portion; as best seen in FIG.5. As to the functional language in the claims, it is noted that the law of anticipation does not require that the references "teach" what the the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalma v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Further more, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

With respect to claims 3-5, 7, Yao discloses shaft attachment pins that are held within the shaft attachment clamps to be disposed along a line extending toward a distal end of the external fixation device; or a space apart lines and the pins extend inward from the proximal portion of the frame, as best seen in FIG.5.

With respect to claims 8,10-12, the method steps, as set forth, would have been inherently carried out in the operation of the device, as set forth above.

Allowable Subject Matter

Claims 2,6,9,13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 3733


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|-----------|--------|----------------|
| 5,549,609 | 8-1996 | Frankel et al. |
| 6,080,159 | 6-2000 | Vichard |
| 5,190,544 | 3-1993 | Chapman et al. |

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene
March 06, 2006



PEDRO PHILOGENE
EXAMINER